



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

September 11, 1963

Honorable Ken G. Spencer  
County Attorney  
Crane County  
Crane, Texas

Opinion No. C-138

Re: Constitutionality of  
House Bill 95, compen-  
sation and salary raises  
of Crane County officials.

Dear Mr. Spencer:

You have requested an opinion of this office on the constitutionality of House Bill 95, which was recently passed by the 58th Legislature.

House Bill 95 reads in part as follows:

"Section 1. In each county in the State of Texas having a population of more than four thousand, six hundred (4,600) persons according to the last preceding Federal Census and not more than four thousand, seven hundred and fifty (4,750) persons according to such Federal Census, and with a taxable valuation for county purposes of not less than Forty-five Million Dollars (\$45,000,000) according to the tax roll as prepared by the tax assessor-collector of the respective counties for the year 1962, the Commissioners Courts of such counties are authorized to fix the salaries of county and district officials at a sum of not less than the salary paid for the calendar year of 1962, nor more than Eight Thousand, Five Hundred Dollars (\$8,500) per year . . ."

Section 56 of Article III, Constitution of Texas, provides in part:

"Sec. 56. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, . . .

Regulating the affairs of counties, cities, towns, wards or school districts; . . .

And in all other cases where a general law can be made applicable, no local or special law shall be enacted; . . ."

According to the 1960 United States Census, Crane County has a population of Four thousand, six hundred and ninety-nine persons. Crane County is the only county in Texas which has a population of not less than four thousand, six hundred (4,600) persons and not more than four thousand, seven hundred and fifty persons (4,750). As to the requirement in the Bill that the county have a 1962 taxable valuation for county purposes of not less than Forty-five Million Dollars (\$45,000,000) according to the 1962 tax roll, there are some fifty-six counties which have such a valuation including Crane County. However, all of these counties have a population in excess of four thousand, seven hundred and fifty (4,750) persons. In effect, House Bill 95 applies only to Crane County.

House Bill 95 increases the salaries of the county officials of Crane County only. The courts have consistently held such acts to be in violation of Section 56 of Article III of the Constitution of Texas prohibiting the Legislature from enacting local or special laws regulating the affairs of counties. Clark v. Finley, 93 Tex. 171, 54 S.W. 343 (1899); Bexar County v. Tynan, 128 Tex. 223, 97 S.W.2d 467 (1936); Oakley v. Kent, 181 S.W.2d 919 (Tex.Civ.App.1944); and Miller v. El Paso County, 136 Tex. 370, 150 S.W.2d 1000 (1941).

In Bexar County v. Tynan, *supra*, the court discussed the principle of law which applies to this situation in the following language:

"Notwithstanding it is true that the Legislature may classify counties upon a basis of population for the purpose of fixing compensation of county and precinct officers, yet in doing so the classification must be based upon a real distinction, and must not be arbitrary or a device to give what is in substance a local or special law the form of a general law. . . ."

The Court in Miller v. El Paso County, *supra*, stated:

"The purpose of this constitutional inhibition against the enactment of local or special laws is a wholesome one. It is intended to prevent the granting of special privileges and to secure uniformity of law throughout the State as far as possible . . ."

"Notwithstanding the above constitutional provision, the courts recognize in the Legislature a rather broad power to make classifications for legislative purposes and to enact laws for the regulation thereof, even though such legislation may be applicable only to a particular class or in fact, affect only the inhabitants of a particular locality; but such legislation must be intended to apply uniformly to all who may come within the classification designated in the Act, and the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished by the proposed legislation. In other words, there must be a substantial reason for the classification. It must not be a mere arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law. . . ." (Emphasis added).

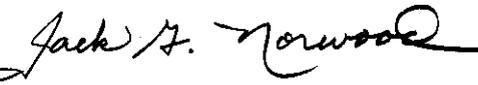
In view of these authorities, it is the opinion of this office that House Bill 95 falls within the prohibition of Section 56 of Article III of the Texas Constitution and is therefore an unconstitutional enactment.

S U M M A R Y

House Bill 95, Acts, 58th Legislature, 1963, is an enactment of the type prohibited under Section 56 of Article III of the Texas Constitution and is therefore unconstitutional.

Yours very truly,

WAGGONER CARR  
Attorney General

By 

Jack G. Norwood  
Assistant

JGN:mkh:ms

Hon. Ken G. Spencer, page 4 (C-138)

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman  
R. E. Richards  
Nicholas A. Irsfeld  
Bill Allen  
Paul Phy

APPROVED FOR THE ATTORNEY GENERAL  
By: Stanton Stone